

ESTTA Tracking number: **ESTTA775150**

Filing date: **10/06/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Apex Tactical Specialties, Inc.		
Entity	Corporation	Citizenship	California
Address	2055 11th Street Los Osos, CA 93402 UNITED STATES		
Attorney information	John E. Lyhus Fitch, Even, Tabin & Flannery, LLP 120 S. LaSalle Street Suite 1600 Chicago, IL 60603 UNITED STATES trademark@fitcheven.com Phone:312 577-7000		

Registration Subject to Cancellation

Registration No	4037632	Registration date	10/11/2011
Registrant	Innovative Arms, LLC 20 Forest Drive Elgin, SC 29045 UNITED STATES		

Goods/Services Subject to Cancellation


Class 013. First Use: 2010/07/06 First Use In Commerce: 2010/07/06
All goods and services in the class are cancelled, namely: Noise suppressors for guns


Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Application No.	87038415	Application Date	05/16/2016
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	APEX		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 013. First use: First Use: 2001/01/01 First Use In Commerce: 2001/01/01 Enhancement kits for pistols comprised of triggers and component parts of firing mechanisms for pistols Class 037. First use: First Use: 2001/01/01 First Use In Commerce: 2001/01/01 Gunsmith services, namely, custom repair, maintenance and modification of fire-arms

U.S. Application No.	87038459	Application Date	05/16/2016
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	APEX TACTICAL SPECIALTIES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 013. First use: First Use: 2001/01/01 First Use In Commerce: 2001/01/01 Enhancement kits for pistols comprised of triggers and component parts of firing mechanisms for pistols Class 037. First use: First Use: 2001/01/01 First Use In Commerce: 2001/01/01 Gunsmith services, namely, custom repair, maintenance and modification of fire-arms		

U.S. Application No.	87038607	Application Date	05/16/2016
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	APEX TACTICAL SPECIALTIES		

Design Mark	
Description of Mark	The mark consists of the words "APEX TACTICAL SPECIALTIES" to the left of a bullseye.
Goods/Services	Class 013. First use: First Use: 2001/01/01 First Use In Commerce: 2001/01/01 Enhancement kits for pistols comprised of triggers and component parts of firing mechanisms for pistols Class 037. First use: First Use: 2001/01/01 First Use In Commerce: 2001/01/01 Gunsmith services, namely, custom repair, maintenance and modification of fire-arms
Attachments	87038415#TMSN.png(bytes) 87038459#TMSN.png(bytes) 87038607#TMSN.png(bytes) 9419-139778 Apex v. Innovative Arms.pdf(147901 bytes)

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/John E. Lyhus/
Name	John E. Lyhus
Date	10/06/2016

9419-139778

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Apex Tactical Specialties, Inc.)	
)	
Petitioner,)	
)	
v.)	Cancellation No.
)	
Innovative Arms, LLC)	
)	
Registrant.)	
)	
Registration No. 4037632)	
Registration Date: October 11, 2011)	
Mark: APEX)	

PETITION FOR CANCELLATION

Apex Tactical Specialties, Inc., having a principal place of business at 2055 11th Street, Los Osos, California 93402 believes that it is and will be damaged by the continued registration of the mark APEX in Registration No. 4037632 belonging to Innovative Arms, LLC (“Registrant”) and hereby petitions to cancel the same upon the following grounds:

1. On information and belief, Registrant is Innovative Arms, LLC, a South Carolina limited liability company having a principal place of business at 20 Forest Drive, Elgin, South Carolina 29045.
2. On information and belief, Registrant filed Application No. 85192886 on December 8, 2010, ultimately resulting in the October 11, 2011 issuance of Registration No. 4037632 for the mark APEX (hereinafter the “APEX Mark”).
3. Reg. No. 4037632 specifies “noise suppressors for guns” in International Class 13 as the only goods in the Registration and claims July 6, 2010, as both the date of first use anywhere and the date of first use in commerce.

4. Registrant is presently the owner of record of Registration No. 4037632.
5. On information and belief, Registrant cannot rely on any date earlier than July 6, 2010 for actual or constructive use of the APEX Mark in connection with noise suppressors for guns.
6. Apex Tactical Specialties, Inc. is a leading manufacturer and distributor of component parts for pistols as well as a provider of gunsmith services.
7. Apex Tactical Specialties, Inc. was incorporated in the State of California on August 2, 2000, and has continuously been doing business under the "APEX" and "APEX TACTICAL SPECIALTIES" trade names, or the like, beginning at least as early as that date.
8. On May 16, 2016, Apex Tactical Specialties, Inc. filed Application No. 87038415 for the mark APEX now specifying amended goods and services of "enhancement kits for pistols comprised of triggers and component parts of firing mechanisms for pistols" in International Class 13 and "gunsmith services, namely, custom repair, maintenance and modification of firearms" in International Class 37 in the U.S. Patent and Trademark Office based on the lengthy and continuous use of the mark in commerce beginning at least as early as January 1, 2001.
9. On May 16, 2016, Apex Tactical Specialties, Inc. filed Application No. 87038459 for the mark APEX TACTICAL SPECIALTIES now specifying amended goods and services of "enhancement kits for pistols comprised of triggers and component parts of firing mechanisms for pistols" in International Class 13 and "gunsmith services, namely, custom repair, maintenance and modification of firearms" in International Class 37 in the U.S. Patent and Trademark Office based on the lengthy and continuous use of the mark in commerce beginning at least as early as January 1, 2001.
10. On May 16, 2016, Apex Tactical Specialties, Inc. filed Application No. 87038607 for the mark APEX TACTICAL SPECIALTIES & Design now specifying amended goods and services of "enhancement kits for pistols comprised of triggers and component parts of firing mechanisms

for pistols” in International Class 13 and “gunsmith services, namely, custom repair, maintenance and modification of firearms” in International Class 37 in the U.S. Patent and Trademark Office based on the lengthy and continuous use of the mark in commerce beginning at least as early as January 1, 2001.

11. Apex Tactical Specialties, Inc. began using its APEX, APEX TACTICAL SPECIALTIES AND APEX TACTICAL SPECIALTIES & Design marks and trade names in commerce long before Innovative Arms, LLC filed Application No. 85192886.

12. On information and belief, Apex Tactical Specialties, Inc. began using the APEX, APEX TACTICAL SPECIALTIES and APEX TACTICAL SPECIALTIES & Design marks and trade names long before any date that Innovative Arms, LLC can establish for the constructive or actual use of the APEX Mark.

13. Apex Tactical Specialties, Inc. has never given consent or permission to Innovative Arms, LLC to use the APEX Mark.

14. The APEX Mark, Registration No. 4037632, is cited in likelihood of confusion refusals issued in examination under Section 2(d) of the Lanham Act against Application Nos. 87038415, 87038459 and 87038607 belonging to Apex Tactical Specialties, Inc.

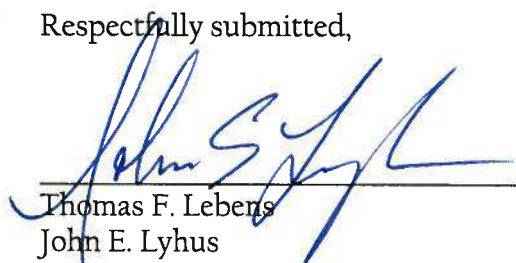
15. The maintenance of Registration No. 4037632 for the APEX Mark on the Principal Register presently prevents Application Nos. 87038415, 87038459 and 87038607 from proceeding to registration, causing damage to Apex Tactical Specialties, Inc.

PRAYER FOR RELIEF

WHEREFORE, Apex Tactical Specialties, Inc. respectfully requests that Registration No. 4037632 for the APEX Mark be cancelled in its entirety, and that Apex Tactical Specialties, Inc. be awarded such further relief as the Board deems just and proper.

Respectfully submitted,

October 6, 2016

A handwritten signature in blue ink, appearing to read "Thomas F. Lebens", is written over a horizontal line.

Thomas F. Lebens
John E. Lyhus
FITCH, EVEN, TABIN & FLANNERY LLP
120 South LaSalle, Suite 1600
Chicago, Illinois 60603

Telephone 312.577.7000
Facsimile 312.577.7007

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I, John E. Lyhus, Attorney for Petitioner, hereby certify that a copy of the foregoing PETITION FOR CANCELLATION was served by first class mail, postage prepaid, upon:

Innovative Arms, LLC
20 Forest Drive
Elgin, South Carolina 29045

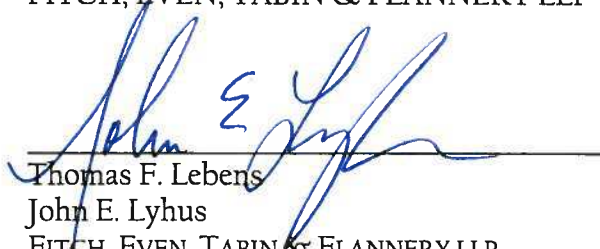
Registrant

B. Craig Killough
Barnwell Whaley Patterson & Helms, LLC
P.O. Drawer H
Charleston, South Carolina 29402

Registrant's Attorney of Record

on this 6th day of October 2016.

FITCH, EVEN, TABIN & FLANNERY LLP



Thomas F. Lebens
John E. Lyhus
FITCH, EVEN, TABIN & FLANNERY LLP
120 South LaSalle, Suite 1600
Chicago, Illinois 60603

Telephone 312.577.7000
Facsimile 312.577.7007

Attorney for Petitioner

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